

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO.1:15CR0025
)	1:15CV1773
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
Vs.)	
)	
NAKESHA M. TAYLOR,)	OPINION AND ORDER
)	
Defendant.)	

CHRISTOPHER A. BOYKO, J:

This matter is before the Court on Defendant's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. §2255 (ECF #31). The Government filed a Response in Opposition to Defendant's Motion (ECF#39). For the following reasons, the Court denies Defendant's Motion.

FACTS

On January 14, 2015, Defendant was indicted by a grand jury on ten counts of False, Fraudulent, and Fictitious Claims. Defendant pleaded guilty under the terms of a Plea Agreement to all counts on May 6, 2015. On August 20, 2015, the Court

sentenced Defendant to a term of imprisonment of twelve months and one day, to pay \$8,692 in restitution and three years of Supervised Release. Defendant filed a Notice of Appeal and a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence on September 1, 2015.

The Sixth Circuit Court of Appeals has unambiguously held that a § 2255 motion is not properly before a district court while the movant's case is pending on direct appeal, "we now adopt the rule espoused by multiple Circuits that in the absence of extraordinary circumstances, a district court is precluded from considering a § 2255 application for relief during the pendency of the applicant's direct appeal." *Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998) (citations omitted). See *Starnes v. United States*, 18 Fed. Appx. 288, 291 (6th Cir. 2001).

Here, the record is clear that Defendant filed a Notice of Appeal on September 1, 2015, from the within matter and presently has a direct appeal before the Sixth Circuit in the matter styled, *United States v. Nakesha M. Taylor*, Case No. 15-3959. Under the Sixth Circuit's holdings in *Capaldi* and *Starnes*, Defendant's recently filed § 2255 Application is not properly before the Court while her direct appeal is pending. Therefore, Defendant's § 2255 Motion is denied as procedurally defective.

IT IS SO ORDERED.

September 17, 2015
Date

s/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge